IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 36 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVABHAI THAKARSHIBHAI PARMAR - Applicant(s)
Versus
DEEPSANGBHAI RATANSANGBHAI JADAV - Opponent(s)

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Appearance :

MR SATYEN B RAWAL for Applicant(s) : 1,MR AB GATESHANIYA for Applicant(s) : 1,
MR KIRTIDEV R DAVE for Opponent(s) : 1,
MR RAHUL K DAVE for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 02/04/2007

ORAL JUDGMENT

Rule. Mr.Kirtidev R. Dave, learned advocate for respondent no.1 waives service of rule. Heard learned advocate for the petitioner. Perused the

order passed by the learned Principal Civil Judge, Dhandhuka below application, Exh.28 in Regular Civil Suit No.27 of 2004 dated 02.02.2006. Taking into consideration the observation made by the learned Judge, on perusal of the record of the suit, it is noticed that summons issued to defendant were that of Regular Suit. The learned Judge thereafter, makes two contradictory observations, namely,

> “Thereafter the suit was proceeded as Summary Suit.”

The second observation made by the learned Judge is that,

> “But thereafter, the prescribed procedure for Summary Suit was not followed.”

The learned Judge has also recorded in terms that,

> “On perusal of the record of the suit it is clear that there are so many procedural irregularities.”

That being so, the learned Judge has committed error in ordering that the suit be considered to be Summary Suit and the summons which are served to the

defendant should be treated as summons in Summary Suit.

This is in disregard of the fact that the case of the defendant is that the promissory note, which is the basis of the suit, was obtained by the plaintiff by fraud. Such an issue cannot be tried by way of Summary Suit. In that view of the matter, the judgement and order dated 02.02.2006 is hereby quashed and set aside. The Court below is directed to try Regular Civil Suit No.27 of 2004 as Regular Suit. The Record & Proceedings be sent back forthwith. Rule is made absolute. No order as to costs.

(RAVI R. TRIPATHI, J.)

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